

Appeal from a decision of the Montana State Office, Bureau of Land Management, cancelling noncompetitive oil and gas lease M-64691 Acq.

Reversed.

1. Oil and Gas Leases: Known Geologic Structure

BLM does not properly include land within the known geologic structure of a producing oil or gas field where the land does not constitute the smallest legal subdivision crossed by the productive limits of an entrap-
ping structure but is included merely because it falls within a 640-acre
State spacing unit.

APPEARANCES: Charles J. Rydzewski, pro se.

OPINION BY ADMINISTRATIVE JUDGE KELLY

Charles J. Rydzewski has appealed from a decision of the Montana State Office, Bureau of Land Management (BLM), dated June 20, 1986, cancelling his noncompetitive oil and gas lease, M-64691 Acq., because the land included in the lease had been determined to be within an unnamed Known Geologic Structure (KGS) effective prior to lease issuance.

Rydzewski was awarded priority for parcel No. MT-577 in a February 1985 simultaneous oil and gas lease drawing and subsequently filed an oil and gas lease offer for that land on July 29, 1985. A notation on the lease offer form indicates that BLM determined that the land was not within a KGS as of August 20, 1985. Effective September 1, 1985, BLM issued a noncompetitive oil and gas lease to Rydzewski for 80 acres of land situated in the E\NE^ sec. 25, T. 28 N., R. 1 W., Principal Meridian, Pondera County, Montana, in which the United States owns 50 percent of the mineral interest, pursuant to section 3 of the Mineral Leasing Act for Acquired Lands, as amended, 30 U.S.C. | 352 (1982). The lease was signed by the Chief, Fluids Adjudication Section, on August 22, 1985.

By memorandum dated June 6, 1986, the Acting Deputy State Director, Division of Mineral Resources, informed the State Director that, based on a geologic review, certain lands, including all of sec. 25, T. 28 N., R. 1 W.,

Principal Meridian, Pondera County, Montana, had been determined to be within an unnamed KGS "effective June 10, 1985." In its June 1986 decision, BLM cancelled noncompetitive oil and gas lease M-64691 Acq. because the land included in the lease had been determined to be within a KGS effective prior to lease issuance and thus could only be leased by competitive bidding. 1/ Rydzewski has appealed from that BLM decision.

In his statement of reasons for appeal, appellant does not challenge BLM's authority to cancel his noncompetitive oil and gas lease where it encompasses land determined to be within a KGS at the time of issuance. Appellant only challenges BLM's inclusion of the land within a KGS where the "last known well" drilled in the vicinity of the leased land, i.e., the McFarland Energy 6 DXX-25 well drilled to a depth of 800 feet in the SE^ NW^ sec. 25, T. 28 N., R. 1 W., Principal Meridian, Pondera County, Montana, and completed November 28, 1977, never had "commercial production" and there had not been any other drilling in the ensuing 8 years. 2/

The record indicates that BLM's decision to designate the unnamed KGS involved herein was based on a "Geologic Report" prepared by BLM geologist John R. McKay and signed by him on June 6, 1986. That report indicates that BLM specifically based the designation on 23 wells, of which 6 were shut-in and 17 plugged and abandoned, and the corresponding identification of gas reservoirs in three separate sand horizons, i.e., the Blackleaf Spike Horizon, the Leavitt Sand and the 4th Bow Island Sand. The report further indicates that sec. 25 was included in the KGS solely on the basis of a determination of the productive limits of the reservoir in the Blackleaf Spike Horizon identified in the McFarland Energy well, which was classified as a shut-in well and is situated west of the subject land. The report concluded that: "The reservoir limits mapped on this horizon are shown to be tear drop shaped, formed across a broad structural nose that trends northeast. A pinch-out of the sand forms the western limit and a gas/water contact controls the eastern boundary" (Geologic Report at 2). Attached to the report is a map (Plate 3) depicting the "reservoir limit" of the Blackleaf Spike Horizon surrounding the McFarland Energy well and the

1/ On Dec. 22, 1987, Congress amended the applicable statutory provisions delineating the proper methods for leasing Federal oil and gas, both in acquired and public domain lands, providing that henceforth all leasing would initially be by competitive bidding, followed by noncompetitive leasing on a limited basis. See 101 Stat. 1330-256 (1987).

2/ Appellant submitted with his appeal a copy of a Feb. 4, 1986, letter in which the Administrator/Petroleum Geologist with the Montana Board of Oil and Gas Conservation reported that the McFarland Energy well had initially produced 24,000 cubic feet of gas per day but that the Board had no records "showing the well ever produced gas commercially." With apparent reference to the initial production, appellant stated in his appeal that it was a "common occurrence for drillers * * * to show some gas readings" and that "general flat gas areas always have some shows but no structure."

gas/water contact, both running through sec. 25 and adjacent sections. This map indicates that the eastern limit of the reservoir, where the productive sand pinches out, runs in a virtual north-south direction through sec. 25 coming near but not crossing the E\ NE^ of sec. 25. Moreover, the gas/water contact which defines the actual productive limit of the reservoir to the east of the McFarland Energy well is situated almost 1500 feet from the E\ NE^ of sec. 25 at its closest point. All of this indicates that, while the reservoir comes near to the leased land, it would be productive at that point only of water. In any case, the productive limits of the reservoir on the Blackleaf Spike Horizon clearly do not cross the E\ NE^ sec. 25 and BLM has not identified any other productive interval which might cross that land. The report, however, indicates that BLM included all of sec. 25 in the KGS based on the decision to include "all 640-acre [State] spacing units that are crossed by those limits." See also Memorandum to the Chief, Fluids Adjudication Section, from the Acting Chief, Leasing (KGS) Section, dated July 15, 1986, at 2.

It is well established that acquired lands situated within a KGS of a producing oil or gas field were, at the time of issuance of appellant's lease, not available for noncompetitive leasing and that BLM was required to reject a noncompetitive oil and gas lease offer for such lands where the KGS determination was made prior to lease issuance. Carol Ann Hoffman, 100 IBLA 139 (1987); Carolyn J. McCutchin, 99 IBLA 29 (1987). That course of action was mandated by the applicable statute (30 U.S.C. § 226(b) (1982)). McDonald v. Clark, 771 F.2d 460, 464 (10th Cir. 1985); McDade v. Morton, 353 F. Supp. 1006, 1010 (D.D.C. 1973), aff'd, 494 F.2d 1156 (D.C. Cir. 1974). Moreover, BLM has the authority to administratively cancel a noncompetitive oil and gas lease issued at a time when the land had been determined to be unavailable for leasing because it was situated within a KGS and thus was clearly issued in violation of the statute. 3/ See Boesche v. Udall, 373 U.S. 472 (1963); Hanes M. Dawson, 101 IBLA 315, 318 (1988); Larry E. Clark, 66 IBLA 23, 29 (1982). However, there arises some question, in the present case, whether BLM had the authority to cancel appellant's noncompetitive oil and gas lease where the KGS determination was made after lease issuance, albeit effective on a date prior to lease issuance. See Lee Oil Properties, Inc., 85 IBLA 287, 292-93 (1985); Barbara C. Lisco, 26 IBLA 340 (1976). 4/

3/ At one time, this authority might have been constrained by Departmental regulation 43 CFR 3108.3(c) (1987), which required that cancellation be accomplished through appropriate judicial proceedings where the land was known to contain valuable deposits of oil and gas. See Suzanne Walsh, 98 IBLA 363, 370-71 (1987). However, the regulation has been deleted. See 53 FR 22840 (June 17, 1988).

4/ The record indicates that BLM had not yet determined that the subject land was within a KGS at the time the Chief, Fluids Adjudication Section, signed appellant's lease on Aug. 22, 1985. The Geologic Report upon which BLM based its KGS determination bears the date June 10, 1985, which was the

However, we need not resolve that question where the record indicates that the leased land was not crossed by the productive limits of any oil or gas reservoir but was included in the KGS solely on the basis that it falls within a 640-acre State spacing unit. In such circumstances, the E\ NE^ sec. 25 was not properly included in the KGS.

[1] A KGS is defined by 43 CFR 3100.0-5(1) (1987) as the "trap in which an accumulation of oil or gas has been discovered by drilling and determined to be productive, the limits of which include all acreage that is presumptively productive." What this means is that a KGS properly encompasses all land which is determined by BLM to contain the entrapping structure so long as the structure has been discovered by drilling to be productive somewhere within the land. ^{5/} The mere presence of the structure renders the land presumptively productive and properly includable in the KGS. See, e.g., Beard Oil Co., supra at 44; Kathleen M. Blake, 96 IBLA 61, 67 (1987).

In mapping the productive limits of an entrapping structure, BLM has used any of a number of various markers, e.g., a net effective reservoir

fn. 4 (continued)

effective date of that determination. However, the report was not signed by the BLM geologist who prepared it until June 3, 1986. This indicates that the KGS determination was not made until that later date. In addition, in

a July 15, 1986, memorandum to the Chief, Fluids Adjudication Section, the Acting Chief, Leasing (KGS) Section, stated that "the subject lease was clearlisted on August [20,] 1985, during the time that the subject KGS was being reviewed prior to approval. The person doing the clearlisting was not aware of the pending KGS." In Lisco and Lee Oil Properties, we essentially held, in light of the court's opinion in Skelly Oil Co. v. Morton, No. 74-411 (D.N.M. July 16, 1975), that BLM only has the authority to cancel a noncompetitive oil and gas lease which is determined after lease issuance to be within a KGS effective prior to that date where, at the time of lease issuance, BLM was aware of the facts necessary to establish a KGS, although the official pronouncement had not been made and thus the lease was issued in contravention of the statute. See 43 CFR 3100.3-2 (1987). The question thus becomes, in the present case, whether BLM was aware of the facts necessary to establish the KGS on June 10, 1985, prior to issuance of noncompetitive oil and gas lease M-64691 Acq. However, as noted infra, we need not resolve that question.

^{5/} According to BLM, that "drilling" which determines that an entrapping structure is productive may be, contrary to appellant's position, a shut-in well which has at one time been determined to be productive of oil or gas, although not productive in commercial quantities. See Memorandum to the Chief, Fluids Adjudication Section, from the Acting Chief, Leasing (KGS) Section, dated July 15, 1986, at 1. We agree. See Beard Oil Co., 99 IBLA 40, 47 (1987); Robert D. Snyder, 13 IBLA 327, 330 (1973). Thus, the McFarland Energy well properly served as the basis for a KGS designation where it established that the Blackleaf Spike Horizon was productive.

isopach or a structural contour. However, in Pamela S. Crocker-Davis, 94 IBLA 328 (1986), we concluded that BLM properly includes in a KGS only the smallest legal subdivision (quarter quarter section) and not an entire

640-acre State spacing unit crossed by the productive limits of an entrapping structure as drawn along such a marker. Thus, we expressly rejected BLM's inclusion of land within a KGS merely because it fell within a 640-acre State spacing unit, in the absence of any evidence that designation as a spacing unit itself indicated the presence of a producing structure.

In the present case, it is clear that the E\ NE^ sec. 25 was included in the unnamed KGS solely on the basis that it fell within a 640-acre State spacing unit where the land was not crossed by the eastern limit of the reservoir in the Blackleaf Spike Horizon or, more importantly, the gas/water contact, which defined the productive limit of that reservoir to the east of the McFarland Energy well. There simply is no evidence that the subject land contains any portion of an entrapping structure which has elsewhere been discovered by drilling to be productive, such that the land can be considered "presumptively productive." Accordingly, we must conclude that BLM improperly included E\ NE^ sec. 25 in the unnamed KGS and therefore had no basis for cancelling appellant's noncompetitive oil and gas lease.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is reversed.

John H. Kelly
Administrative Judge

I concur:

Kathryn A. Lynn
Administrative Judge
Alternate Member